

United States District Court
For the Northern District of California

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

THE INSTITUTE OF MEDICAL)	Case No.: 11-CV-05755-LHK
EDUCATION, INC.,)	
)	ORDER GRANTING DEFENDANT’S
Plaintiff,)	MOTION FOR SUMMARY JUDGMENT
v.)	AS TO CLAIM ONE OF THE
)	COMPLAINT AND DECLINING TO
WESTERN ASSOCIATION OF SCHOOLS)	EXERCISE SUPPLEMENTAL
AND COLLEGES, and DOES 1 THROUGH 10,)	JURISDICTION
INCLUSIVE)	
)	
Defendants.)	
_____)	

The Institute of Medical Education (“IME”) brought this action seeking recovery from the Western Association of Schools and Colleges (“WASC”) for denial of common law due process, breach of contract, breach of the implied covenant of good faith and fair dealing, intentional interference with contract, negligent interference with prospective business advantage, and promissory estoppel related to WASC’s failure to maintain Department of Education (“DOE”) recognition for the WASC Accrediting Commission for Schools (“WASC-ACS”). WASC filed a Motion for Summary Judgment as to all claims, which IME opposed with a Cross-Motion for Summary Judgment. *See* WASC Mot. Summ. J. (“WASC MSJ”), ECF No. 101; IME Mot. Summ. J (“IME MSJ”), ECF No. 103. WASC filed an opposition and reply, and IME filed a reply. *See* ECF Nos. 105–07. The Court *sua sponte* noted a possible jurisdictional defect in IME’s case and

ordered the parties to show cause as to why the case should not be dismissed for lack of federal subject matter jurisdiction. *See* ECF No. 113. The parties filed responses. *See* ECF Nos. 114–15. Having considered the parties’ submissions and the relevant law, the Court hereby assumes jurisdiction over IME’s claim for violation of its common law due process rights, GRANTS WASC’s Motion for Summary Judgment as to that claim, and declines to exercise supplemental jurisdiction over the remaining state law claims.

I. BACKGROUND

A. Factual Background

Except as noted below, the facts in this case are largely undisputed. IME is a private postsecondary educational institution, established in 2003, and operating in California, providing “career-oriented education in the areas of Vocational Nursing, Phlebotomy, Medical Assisting, Certified Nurse Assisting, Dental Hygiene, Medical Laboratory Technician, Ultrasound Technology, and Magnetic Resonance Imaging Technology.” Vethody Decl. ¶ 2, ECF No. 103-8. WASC is a regional accreditation organization, headquartered in California, comprised of three commissions: the Accrediting Commission for Schools (for accrediting schools below the college level); the Accrediting Commission for Community and Junior Colleges (for accrediting institutions that offer two-year programs and award associate degrees); and the Accrediting Commission for Senior Colleges and Universities (for accrediting senior colleges and universities). First Amended Complaint (“FAC”) ¶ 3, ECF No. 59; WASC MSJ at 3. The United States Department of Education (“DOE”) recognized WASC-ACS as an accrediting agency for the purposes of Title IV funding (*i.e.*, federal funding for student aid) beginning in 1974, and most recently renewed WASC-ACS’s recognition in 2005. Zinovyev Decl., Ex. C, ECF No. 101-1 at 44. WASC-ACS accredits more than 4,000 schools, Zinovyev Decl., Ex. A, ECF No. 101-1 at 15, approximately 20–25 of which received Title IV funding as of October 2010, Wiener Decl., Ex. E, ECF No. 103-5 at 19.

IME is one of the accredited schools that received Title IV funding. IME initially applied for accreditation with WASC-ACS in January 2007, Vethody Decl. ¶ 3, and received a three-year

term of accreditation beginning in June 2007. FAC ¶ 11. On July 7, 2010, WASC-ACS sent IME a letter confirming that WASC-ACS would grant IME a further six-year term of accreditation, expiring on June 30, 2016, and WASC-ACS ultimately granted this renewal. Vethody Decl., Ex. F, ECF No. 103-8 at 29. IME students began receiving Title IV funding in October 2008. Vethody Decl. ¶ 5.

By August 2010, however, WASC-ACS was poised to lose its DOE recognition. On August 6, 2010, the National Advisory Committee on Institutional Quality and Integrity (“NACIQI”), the body responsible for advising the Secretary of Education with regard to the recognition of accrediting agencies, *see* 20 U.S.C. § 1011c, sent WASC-ACS a draft report identifying 51 deficiencies in the WASC-ACS accreditation process. Zinovyev Decl., Ex. C, ECF No. 101-1 at 44; *see also* Wiener Decl., Ex. C, ECF No. 103-5 at 2. The report recommended that the DOE deny recognition of WASC-ACS unless WASC addressed the deficiencies by September 6, 2010. Wiener Decl., Ex. C, ECF No. 103-5 at 2. WASC, noting that “[l]ess than 10% of the [WASC-ACS accredited] Post-Secondary Schools receive Title IV funding,” decided to reconsider seeking renewal of its DOE recognition. *See* Wiener Decl., Ex. D, ECF No. 103-5 at 17.

Before it did so, however, WASC-ACS solicited feedback from the entities that would be most concretely affected by the change in DOE accreditation. On August 23, 2010, WASC-ACS sent its accredited institutions a letter disclosing that “WASC is strongly considering withdrawing from its relationship with the USDOE as it relates to accrediting postsecondary institutions for Title IV purposes.” Zinovyev Decl., Ex. C, ECF No. 101-1 at 80. IME contends that it never received this letter. Vethody Decl. ¶ 11. On September 2, after reviewing the comments received in response to its notice, WASC withdrew its application for DOE recognition. Wiener Decl., Ex. E, ECF No. 103-5 at 19; Zinovyev Decl., Ex. A, ECF No. 101-1 (“Brown Depo.”), at 176. On September 9, 2010, WASC sent a letter to its accredited institutions alerting them to WASC’s final decision to withdrawal from federal recognition. Wiener Decl., Ex. E, ECF No. 103-5 at 19. The withdrawal became effective on October 26, 2010, when the DOE sent WASC a letter confirming the WASC-ACS withdrawal decision. Zinovyev Decl., Ex. C, ECF No. 101-1 at 82. The DOE letter provided a

1 contact for institutions participating in federal student aid programs “for guidance regarding their
2 continued eligibility and participation.” *Id.* On November 3, 2010, WASC alerted affected
3 institutions to the change in status, and flagged that the DOE would allow affected institutions 18
4 months to find a new accreditation agency so that these institutions would remain eligible for Title
5 IV funding—a window that extended to April 26, 2012. *Id.* at 83; *see also* 20 U.S.C. § 1099c.

6 IME ultimately failed to secure accreditation through another agency. Vethody Decl. ¶ 14.
7 All other WASC-ACS-accredited schools that received Title IV funding in contrast were able to
8 secure alternate accreditation within this 18-month window. Brown Decl. ¶ 2, ECF No. 101-2;
9 Zinovyev Decl., Ex. C, ECF No. 101-1 at 15.

10 IME continued to operate under WASC-ACS accreditation after WASC-ACS withdrew
11 from DOE recognition. *See* Zinovyev Decl., Ex. C, ECF No. 101-1 at 40. This continued
12 accreditation was notwithstanding WASC’s discovery in August 2010 that IME operated on a “for-
13 profit” basis in violation of WASC guidelines. *See* Zinovyev Decl., Ex. C, ECF No. 101-1 at 3.
14 WASC continued to accredit IME despite this violation because IME was seeking accreditation
15 from other agencies. *Id.* As part of WASC’s continued accreditation of IME, WASC provided a
16 letter in support of IME’s bid to seek certification from a different agency to maintain its Title IV
17 funding. *See* Zinovyev Decl., Ex. C, ECF No. 101-1 at 23. WASC’s Associate Executive Director
18 asked IME’s founder to “please let [him] know whenever you need more letters of
19 recommendation and we will be ready to prepare them” *See* Zinovyev Decl., Ex. C, ECF No. 101-1
20 at 22. In response, IME’s founder stated, “Thank you very much and looking forward to healthy
21 relationship with WASC (even if you are not our Title IV/primary accreditation agency).” *Id.*

22 On February 14, 2012, the California Bureau for Private Postsecondary Education
23 (“BPPE”) issued IME an “Amended Notice of Emergency Decision” requiring that IME cease
24 enrollment, instruction, and the collection of tuition by February 16, 2012. Wiener Decl., Ex. J,
25 ECF No. 103-7 at 9. The BPPE based its decision in part on the fact that IME was misrepresenting
26 its accreditation status under California law by labeling itself “accredited” in its advertising and
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1 promotional materials and that IME was “no longer financially viable” because IME “relie[d] on
2 student federal financial aid in order to operate.” *Id.* at 11.

3 **B. Procedural Background**

4 IME filed this action on November 11, 2011, seeking redress from WASC for denial of
5 common law due process, breach of contract, breach of the implied covenant of good faith and fair
6 dealing, intentional interference with contract, negligent interference with prospective business
7 advantage, and promissory estoppel. Compl., ECF No. 1. IME filed an amended complaint on
8 October 24, 2012 (hereinafter, “the complaint”). *See* FAC. On July 26, 2013, WASC filed a
9 Motion for Summary Judgment as to all of IME’s claims. *See* WASC MSJ. IME filed an
10 opposition and Cross-Motion for Summary Judgment on August 8, 2013. *See* IME MSJ. WASC
11 filed a reply and opposition, *see* ECF Nos. 105–06, and IME filed a reply, *see* ECF No. 107.

12 After reviewing the briefing, the Court noted a possible jurisdictional defect, and ordered
13 the parties to show cause as to why the case should not be dismissed for lack of subject matter
14 jurisdiction. ECF No. 113. Specifically the Court asked the parties to brief whether either the
15 Higher Education Act (“HEA”), 20 U.S.C. § 1099b(f), or the federal common law conferred
16 federal subject matter jurisdiction under 28 U.S.C. § 1331. *See id.* WASC filed a response arguing
17 that the case should be dismissed for lack of jurisdiction, ECF No. 114, and IME argued that
18 jurisdiction is in fact proper, ECF No. 115. Arthur Chen, Minh Duc Do, Cynthia Donovan,
19 Eduardo Espinoza, Alejandro Loquillano, Jr., Lynnett Reyes, and Lisa Saminathen, each a
20 judgment creditor of IME (collectively “amici”), moved for leave to file an amicus curiae brief in
21 response to the Court’s order. ECF No. 116.¹

22 **II. LEGAL STANDARD**

23 Summary judgment is appropriate if, viewing the evidence and drawing all reasonable
24 inferences in the light most favorable to the nonmoving party, there are no genuine disputed issues

25 ¹ The Court has “broad discretion to appoint amici curiae.” *Hoptowit v. Ray*, 682 F.2d 1237, 1260
26 (9th Cir. 1982). Amici here contend that this Court should use California law to interpret a critical
27 term, “accreditation” in 20 U.S.C. § 1099b(f). Because amici’s brief addresses a key argument in
28 detail that goes beyond the analysis offered by the parties, *see* ECF No. 116-1 at 4–5, the Court
will consider the amici’s submission. Accordingly, the Court GRANTS amici’s motion for leave to
file an amicus brief.

of material fact, and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). At the summary judgment stage, the Court “does not assess credibility or weigh the evidence, but simply determines whether there is a genuine factual issue for trial.” *House v. Bell*, 547 U.S. 518, 559–60 (2006). The moving party has the burden of demonstrating the absence of a genuine issue of fact for trial. *Celotex*, 477 U.S. at 323. To meet its burden, “the moving party must either produce evidence negating an essential element of the nonmoving party’s claim or defense or show that the nonmoving party does not have enough evidence of an essential element to carry its ultimate burden of persuasion at trial.” *Nissan Fire & Marine Ins. Co. v. Fritz Companies, Inc.*, 210 F.3d 1099, 1102 (9th Cir. 2000) (citation omitted). Once the moving party has satisfied its initial burden of production, the burden shifts to the nonmoving party to show that there is a genuine issue of material fact. *Id.* at 1103.

III. JURISDICTION

IME claims subject matter jurisdiction exists pursuant to 28 U.S.C. § 1331 and 20 U.S.C. § 1099b(f). While WASC had not objected to the jurisdiction of the federal courts in this case, “[w]hen a requirement goes to subject-matter jurisdiction, courts are obligated to consider *sua sponte* issues that the parties have disclaimed or have not presented.” *Gonzalez v. Thaler*, 132 S. Ct. 641, 648 (2012). Here, IME claimed subject matter jurisdiction under a seldom-used provision of HEA, 20 U.S.C. § 1099b(f), as well as federal question jurisdiction under 28 U.S.C. § 1331 with regard to its common law due process claim. Because IME’s claims appeared on their face to fall outside the jurisdictional grant of section 1099b(f), and because the common law due process claim appeared to be inextricably interwoven with section 1099b(f), this Court ordered the parties to show cause as to why the case should not be dismissed for lack of subject matter jurisdiction. ECF No. 113. Having considered the parties’ submissions, for the reasons stated below, the Court finds that while section 1099b(f) does not provide federal jurisdiction for IME’s case, the Court may nevertheless assume jurisdiction over IME’s cause of action for common law due process pursuant to section 1331.

A. Jurisdiction under 20 U.S.C. § 1099b(f)

IME first argues that jurisdiction is proper because of the jurisdictional grant found in the HEA. *See* 20 U.S.C. § 1099b(f). Because a federally recognized accrediting agency is in many ways “a proxy for [the Department of Education (“DOE”)]” in deciding which institutions will be eligible for Title IV funding, section 1099b(f) grants exclusive jurisdiction to the federal courts for lawsuits brought against such accrediting agencies involving the “denial, withdrawal, or termination of accreditation.” *Chicago Sch., Inc. v. Accreditation Alliance of Career Sch. & Colleges*, 44 F.3d 447, 449 (7th Cir. 1994). Under the heading “Jurisdiction,” that statute provides:

Notwithstanding any other provision of law, any civil action brought by an institution of higher education seeking accreditation from, or accredited by, an accrediting agency or association recognized by the Secretary for the purpose of this subchapter and part C of subchapter I of chapter 34 of Title 42 and involving the denial, withdrawal, or termination of accreditation of the institution of higher education, shall be brought in the appropriate United States district court.

20 U.S.C. § 1099b(f). Accordingly, section 1099b(f) confers federal jurisdiction where (1) an institution of higher education (2) accredited by or seeking accreditation from a federally recognized accrediting agency (3) brings a civil action involving the denial, withdrawal, or termination of accreditation.

IME does not satisfy the jurisdictional requirements of section 1099b(f) because it fails to meet the statute’s third prong because the wrongdoing it alleges in this case does not involve the “denial, withdrawal, or termination of accreditation.” IME alleges that WASC-ACS “voluntarily withdrew from the USDOE’s Title IV compliance process.” FAC ¶ 20. IME contends that this withdrawal meant that “IME was no longer accredited by a USDOE-approved accrediting commission.” *Id.* ¶ 22. But IME does not allege, and the facts do not show, that WASC-ACS *ceased* accrediting IME. Indeed, more than six months after WASC’s withdrawal from DOE recognition, WASC offered to honor the full term of IME’s accreditation despite IME’s breach of a WASC rule against operating as a for-profit institution. Zinovyev Decl., Ex. C, ECF No. 101-1 at 40–41. IME used its continuing accreditation from WASC as a credential in its search for a new accrediting agency. *Id.* IME’s complaint is thus not centered on any cessation of accreditation because there was none. Instead, IME’s complaint focuses on the fact that WASC-ACS’s

1 withdrawal from federal recognition “rendered the accreditation that WASC-ACS provided to IME
2 meaningless.” FAC ¶ 36.

3 The jurisdictional question turns on whether “accreditation” under 1099b(f) contemplates
4 mere accreditation, as WASC contends and which was indisputably maintained, or whether the
5 statute contemplates the accreditation by a DOE-approved accrediting agency, as IME contends
6 and which indisputably was not maintained. Agreeing with WASC, the Court finds that the HEA
7 does not provide jurisdiction to a claim brought on the facts of the instant case because
8 “accreditation” refers to the status granted by an accrediting agency and not to the benefits
9 accorded to such status by the federal or state governments. The plain meaning of the statute is
10 clear that where such status has not been denied, withdrawn, or terminated, section 1099b provides
11 no jurisdiction. Where statutory language has a plain and unambiguous meaning consonant with
12 the relevant statutory scheme, such plain meaning will control. *Robinson v. Shell Oil Co.*, 519 U.S.
13 337, 340 (1997). In the education context, to “accredit” is to “recognize (a school) as having
14 sufficient academic standards to qualify graduates for higher education or professional practice.”
15 *Black's Law Dictionary* 23 (9th ed. 2009). An accrediting agency may therefore “accredit” an
16 institution of higher education regardless of whether the agency is recognized by the DOE. *See*
17 *Keams v. Tempe Technical Inst., Inc.*, 39 F.3d 222, 227 (9th Cir. 1994) (“[An accrediting] agency
18 can go on accrediting schools” regardless of whether it has DOE recognition). Accordingly, a
19 change in an accrediting agency’s status vis-à-vis the DOE is not equivalent to or tantamount to the
20 denial, withdrawal, or termination of accreditation and is therefore not a fact that would give rise to
21 federal jurisdiction under section 1099b(f).

22 This reading is consistent with the Ninth Circuit’s decision in *Keams*, 39 F.3d at 222. The
23 question before the Ninth Circuit in that case was whether the HEA preempted a claim under state
24 tort law brought by students who claimed that an accrediting agency had negligently accredited a
25 school. *Id.* at 224. The Ninth Circuit held that it did not. *Id.* The Ninth Circuit held that while the
26 Secretary of Education had promulgated regulations for determining whether an accrediting agency
27 would be recognized by the DOE, these regulations did not displace state law challenges to
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1 accreditation. *Id.* at 226. The Ninth Circuit stated that the students’ brief “argues that these
2 regulations ‘are not standards as to how the agency should accredit a school, but criteria as to
3 whether an accrediting agency should be recognized by the agency.’ That is correct. If an
4 accrediting agency does not meet the criteria, the Secretary can refuse to list it, but the agency can
5 go on accrediting schools.” *Id.* at 226–27. In so concluding, the Ninth Circuit recognized that
6 accreditation was not confined to accreditation by a DOE-recognized agency, but rather that
7 accreditation was a more general concept that embodied the relationship between an accrediting
8 agency and a higher education institution.

9 Confining “accreditation” to the plain language of the statute is also consistent with the
10 legislative scheme envisioned by Congress and the regulations promulgated pursuant to the statute.
11 Specifically, the statutory and regulatory schemes contemplate that before an accrediting agency
12 can be DOE-recognized, that such an agency have “experience” accrediting schools. *See* 20 U.S.C.
13 § 1099b (in order to be recognized, an accrediting agency “shall demonstrate . . . experience”); 34
14 C.F.R. § 602.12 (recognition requires that an agency has “granted accreditation or preaccreditation
15 . . . [t]o one or more institutions” and “[c]onducted accrediting activities”). Because DOE
16 recognition requires experience granting accreditations, reading “accreditation” to mean
17 “accreditation by a DOE-recognized agency,” as IME suggests, would lead to a circular and
18 paradoxical result.

19 Furthermore, accepting IME’s definition would interfere with the statutory scheme
20 envisioned by Congress. Specifically, Congress has created a remedy for educational institutions
21 whose accrediting agencies have withdrawn from DOE recognition. This solution lies outside the
22 section 1099b context. The HEA expressly provides for securing accreditation through an
23 alternative channel by providing educational institutions a grace period of up to 18 months for
24 securing alternative accreditation in the event that the accrediting institution withdraws from
25 recognition. *See* 20 U.S.C. § 1099c(h)(2).

26 IME attempts to alter the definition of “accreditation” as used by section 1099b(f) in an
27 attempt to cure this apparent jurisdictional defect. To this end, IME relies on the definitions of
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1 “accredited” provided by the California Education Code and in an unrelated provision of the Code
2 of Federal Regulations. *See* ECF No. 115 at 4 (citing Cal. Educ. Code § 94813; 34 C.F.R. § 600.2).
3 However, neither definition is controlling, and neither provides a coherent interpretation of section
4 1099b(f). Accordingly, for the reasons stated below, the Court does not find IME’s contentions
5 persuasive.

6 The California statute is inapposite. The California statute provides that “[a]ccredited”
7 means an institution is recognized or approved by an accrediting agency recognized by the United
8 States Department of Education.” Cal. Educ. Code § 94813. IME and amici argue that the legal
9 effect of the California law is to condition state law accreditation on the federal recognition of the
10 accrediting agency, making withdrawal of such recognition equivalent in fact and in law to a
11 withdrawal of accreditation. *Id.* at 5; ECF No. 116, ex. 1 at 6. “The words of a statute must be read
12 in their context and with a view to their place in the overall statutory scheme.” *Davis v. Michigan*
13 *Dep’t of Treasury*, 489 U.S. 803, 809 (1989). Here, the HEA and the California Education Code are
14 separate and independent statutory schemes, with separate purposes. The California definition of
15 “accredited” is only controlling in title 3, part 59, chapter 8 of the California Education Code,
16 entitled “Private Postsecondary Institutions.” *See* Cal. Educ. Code § 94810. There, the state
17 Education Code uses the cited California definition of “accredited” to allow certain institutions to
18 bypass procedures generally required of private postsecondary institutions. Cal. Educ. Code §
19 94890. The statute also prohibits these private postsecondary schools from advertising or
20 promoting themselves as accredited unless they are accredited as defined in the code. Cal. Educ.
21 Code § 94897(e). The fact that California law provides advantages to schools accredited by a DOE-
22 recognized agency and regulates advertising regarding accreditation, however, does not alter the
23 fact that unrecognized agencies can “accredit” schools for the purposes of federal law, specifically,
24 section 1099b(f). Moreover, IME has no support for its contention that this state law interpretation
25 should be used to modify the federal statutory scheme, which would result in differing
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1 interpretations of federal law based on each state's law. Accordingly, the Court finds that
2 California law does not alter the plain meaning of the HEA or the Congressional intent behind it.²

3 IME's reliance on the federal regulatory definition in 34 C.F.R. § 600.2 is also misplaced.
4 First, IME has not argued that the statute is ambiguous, and thus provides no reason for the Court
5 to look to administrative interpretations. *See Chevron, U.S.A., Inc. v. Natural Res. Def. Council,*
6 *Inc.*, 467 U.S. 837, 843–44 (1984). Second, even if the Court had found the statute ambiguous, the
7 regulations do not cut in IME's favor. IME relies on the definition provided in 34 C.F.R. § 600.2,
8 in which "accredited" is defined as "the status of public recognition that a *nationally recognized*
9 accrediting agency grants to an institution or educational program that meets the agency's
10 established requirements." 34 C.F.R. § 600.2 (emphasis added). While the Court accords
11 "considerable weight . . . to an executive department's construction of a statutory scheme it is
12 entrusted to administer," *Chevron*, 467 U.S. at 844, the regulation IME cites does not interpret
13 "accreditation" as used in section 1099b(f) of the statute. Rather, the definitions provided in 34
14 C.F.R. § 600.2 are expressly limited in their scope to Part 600 of the regulations. Part 600
15 "establishes the rules and procedures that the Secretary uses to determine whether an educational
16 institution qualifies in whole or in part as an eligible institution of higher education under the
17 Higher Education Act." 34 C.F.R. § 600.1.

18 The Court finds more persuasive the DOE's definition of "accreditation" in 34 C.F.R.
19 § 602.3. Omitting any mention of national recognition, this regulation defines "accreditation" as
20 "the status of public recognition that an accrediting agency grants to an educational institution or
21 program that meets the agency's standards and requirements." 34 C.F.R. § 602.3. This definition is
22 also cabined to a discrete portion of the regulations, here Part 602, which governs "[t]he
23 Secretary's Recognition of Accrediting Agencies." *Id.* Part 602 is enacted pursuant to, and
24 corresponds directly to section 1099b, which is similarly entitled "Recognition of accrediting

25 ² Further, the nexus that IME and amici argue exists between federal recognition and the ability to
26 operate under California law is attenuated at best. Unaccredited institutions, as defined by
27 California law, may still operate with BPPE approval. *See* Cal. Educ. Code § 94817. IME's
28 accreditation status was relevant to its shutdown only insofar as IME *misrepresented* its
accreditation status on advertising or promotional materials and insofar as the institution was
insolvent without Title IV funding. *See* Wiener Decl., Ex. J, ECF No. 103-7 at 9.

agency or association.” The Secretary’s interpretation of accreditation found in 34 C.F.R. § 602.3 comports with the Court’s plain reading of the statute and can reasonably be read as actually interpreting the statute in question. In contrast, aside from the bare assertion that “§ 1099b(f) incorporates the definition of ‘accreditation’ contained in 34 C.F.R. § 600.2,” ECF No. 115 at 4 n.5, IME provides no reason why its chosen definition is either convincing or applicable.³ Accordingly, to the extent that considering the DOE’s regulations is proper, those regulations undermine IME’s proposed interpretation and a finding that section 1099b(f) provides jurisdiction for this action.

IME contends that the Court should nevertheless assume jurisdiction over its claim because section 1099b(f) “provides the basis for both the subject matter jurisdiction of the federal court and the plaintiff’s substantive claim for relief.” ECF No. 115 at 3 (quoting *Sun Valley Gasoline, Inc. v. Ernst Enterprises, Inc.*, 711 F.2d 138, 139 (9th Cir. 1983)). IME’s contention is that the Supreme Court’s decision in *Bell v. Hood*, 327 U.S. 678 (1946), requires courts to assume jurisdiction over a cause of action where the question of federal jurisdiction is wrapped up in the question of whether the plaintiff has stated a cause of action under the federal statute. *See Sun Valley Gasoline*, 711 F.2d at 140 (“Under *Bell v. Hood* and its progeny, the failure of a plaintiff to establish a federal cause of action upon which relief may be granted is a question going to the merits of an action.”).

The line of cases requiring courts to assume jurisdiction when a statute both confers jurisdiction and creates a substantive cause of action is inapplicable because section 1099b(f) is exclusively jurisdictional and separate from the merits of IME’s claims. As the Sixth Circuit has held, section 1099b(f) confers jurisdiction, but does not create a cause of action. *See Thomas M. Cooley Law Sch. v. Am. Bar Ass’n*, 459 F.3d 705, 711 (6th Cir. 2006). “[Section] 1099b(f) is labeled ‘Jurisdiction.’ Its purpose is to give federal courts exclusive jurisdiction over disputes involving accreditation Such disputes can be resolved, not through the HEA, but through a common law claim for due process and adequate judicial review.” *Id.* Moreover, the complaint does not, as IME claims in its response to this Court’s order to show cause, bring a claim “that

³ Generally regulations interpret and incorporate the language of statutes, not vice versa.

[IME's] accreditation was wrongfully denied, withdrawn, and/or terminated." ECF No. 115 at 3. Rather, in accordance with the Sixth Circuit's reading of the statute in *Cooley Law School*, IME's complaint attempts to bring a claim for "denial of common law due process" and assorted state law causes of action.⁴ FAC ¶¶ 31–66. Accordingly, section 1099b(f) and its requirements do not provide the substance of any of IME's claims and therefore do not require this Court to assume jurisdiction over IME's claims.⁵

Section 1099b(f) requires the exclusive jurisdiction of the federal courts for actions that meet certain requirements. For the reasons stated above, the facts show that IME's claims do not fall within the section's ambit. The Court therefore finds that section 1099b(f) does not provide federal jurisdiction in this case.

B. Jurisdiction under the Federal Common Law

Having found that the Court lacks jurisdiction by virtue of section 1099b(f), the Court now turns to whether it has jurisdiction under 28 U.S.C. § 1331. Specifically, the Court analyzes whether there is federal question jurisdiction by virtue of the fact that this case raises questions under the federal common law. "[Section] 1331 jurisdiction will support claims founded upon federal common law as well as those of a statutory origin." *Illinois v. City of Milwaukee, Wis.*, 406 U.S. 91, 100 (1972). IME contends that federal courts have consistently exercised federal jurisdiction over common law due process claims in the accreditation context. ECF No. 115 at 8-9.

Here, whether the Court has federal question jurisdiction over IME's common law due process claim is dependent upon whether IME can state a common law due process claim. Specifically, if there is no basis for IME to raise a common law due process claim, then this Court necessarily lacks jurisdiction. As discussed above, under *Bell v. Hood*, federal courts must assume

⁴ Notably, IME does not cite section 1099b(f) in reciting its six causes of action except in reference to its jurisdictional grant. *See* FAC ¶ 33.

⁵ IME's *Bell v. Hood* argument is further weakened by the fact that *Bell* explicitly states that it does not prescribe assumption of jurisdiction where the federal claim is "wholly insubstantial and frivolous." 327 U.S. 678. Any HEA claim here is wholly insubstantial and frivolous, and accordingly would not require this Court to assume jurisdiction. *Cooley Law Sch.*, 459 F.3d at 710 ("[N]early every court to consider the issue [of whether the HEA creates a private right of action] in the last twenty-five years has determined that there is no express or implied private right of action to enforce any of the HEA's provisions." (internal quotation marks omitted)).

jurisdiction over matters when testing for subject matter jurisdiction is intertwined with testing the merits of the claim. *Bell*, 327 U.S. at 682. *Bell* is necessarily implicated where a plaintiff asks a court to imply a common law cause of action from a federal statutory scheme. *See Enders v. Am. Patent Search Co.*, 535 F.2d 1085, 1089 (9th Cir. 1976) (“[A]n implied cause of action created by federal law . . . ‘arises under’ federal law.”). If a cause of action can be implied, then there is federal jurisdiction. On the other hand, if no cause of action can be implied, “then dismissal of the case would be on the merits, not for want of jurisdiction.” *Bell*, 327 U.S. at 683.

Such is the case here. IME asks this Court to find that the HEA implies a common law due process cause of action. *See* ECF No. 115 at 8. If IME is correct, and the HEA does imply a common law due process cause of action, then this Court would have jurisdiction over that cause of action. If IME is incorrect, and the HEA does not imply such a cause of action, then this Court would lack jurisdiction over that cause of action and consequently the whole case. Because *Bell v. Hood* requires that courts assume jurisdiction when the question of whether of a cause of action exists is intertwined with the question of whether subject matter jurisdiction exists, this Court must assume jurisdiction over IME’s first cause of action, as the merits of that cause of action (*i.e.*, whether the HEA implies a common law due process cause of action under the circumstances of this case) and jurisdictional inquiry are so intertwined.⁶

IV. WASC’S MOTION FOR SUMMARY JUDGMENT

A. Denial of Common Law Due Process

Having found that the jurisdictional question is intertwined with the merits, the Court now turns to the merits of IME’s common law due process claim. IME contends that it is entitled to summary judgment on its common law due process claim arising under the HEA. IME MSJ at 11;

⁶ There are two exceptions to assuming jurisdiction under *Bell v. Hood*, neither of which applies here. The first exception to assuming jurisdiction is when the “the alleged claim . . . clearly appears to be immaterial and made solely for the purpose of obtaining jurisdiction,” and the second exception applies where the claim is “wholly insubstantial and frivolous.” *Bell*, 327 U.S. at 682–83. As discussed in more detail in the next section, courts have routinely exercised jurisdiction over common law due process claims arising under the HEA, and there is scant authority on when, in the accreditation context, educational institutions have common law due process rights. Accordingly, the Court finds that IME’s claims are asserted in good faith and are not immaterial, insubstantial, or frivolous.

1 *see also* FAC ¶¶ 31–36. WASC, on the other hand, contends that there exists no such right of
 2 action as a matter of law, ECF No. 106 at 10. WASC MSJ at 15. Both parties have moved for
 3 summary judgment as to the common law due process claim. ECF Nos. 101, 103. For the reasons
 4 stated below, the Court finds as a matter of law that the HEA creates no cause of action for the
 5 common law due process review of a DOE-recognized accrediting agency’s decision to withdraw
 6 from DOE recognition and therefore GRANTS WASC’s Motion for Summary Judgment as to
 7 IME’s first cause of action.

8 The critical question before the Court is whether there exists a cause of action for common
 9 law due process under the circumstances of the instant case. IME contends that federal courts
 10 routinely inquire into whether accrediting agencies have complied with the contours of common
 11 law due process. ECF No. 115 at 8-9.

12 The majority of cases IME cites, however, consider federal common law due process
 13 questions arising from a denial or termination of accreditation, as discussed above, under the HEA.
 14 Accordingly, these cases are examples of the pursuit of common law due process claims rooted in
 15 the HEA’s grant of jurisdiction where there is a denial or withdrawal of accreditation, not as here, a
 16 freestanding common law due process claim. For example, the claims in *Fine Mortuary College,*
 17 *LLC v. American Board of Funeral Service Education, Inc.*, 473 F. Supp. 2d 153, 157 (D. Mass.
 18 2006), plainly concerned the denial of accreditation in that plaintiff institution contested the
 19 accrediting agency’s refusal to reaccredit. Accordingly, the court explicitly considered the cause of
 20 action at issue in that case because of the jurisdictional grant of section 1099b(f). Similarly, in
 21 *Career Care Institute., Inc. v. Accrediting Bureau of Health Education Schools., Inc.*, No. 08-1186,
 22 2009 U.S. Dist. LEXIS 45784 (E.D. Va. Mar. 24, 2009), the plaintiff brought a “claim of common
 23 law due process” after the defendant accrediting institution “issued a final decision to withdraw
 24 [its] grant of accreditation.” *Id.* at *2. This case also fits squarely and explicitly within section
 25 1099b(f)’s jurisdictional grant and is therefore inapposite. *Id.* at *6. Unlike those cases, here, there
 26 has been no termination of accreditation for the purposes of the HEA’s grant of jurisdiction for the
 27 reasons discussed above, and therefore, there can be no claim for common law due process. The
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1 remaining cases that IME cites do not apply the federal common law and are thus inapposite to
 2 IME's contentions here. For example, *Parsons College v. North Central Ass'n of Colleges and*
 3 *Secondary Schools*, 271 F. Supp. 65, 70 (N.D. Ill. 1967), applies Illinois law, not the federal
 4 common law. Further, *Parsons College* also involves a withdrawal of accreditation. *See id.* at 66.⁷

5 This Court could find no federal decision in which a court applied federal common law in
 6 the accreditation context disconnected from the jurisdictional grant of section 1099b(f). This makes
 7 sense. The federal common law in the accreditation context was created and applied because the
 8 HEA grants exclusive federal jurisdiction but does not provide applicable law. *Chicago Sch.*, 44
 9 F.3d at 449 ("If a grant of federal jurisdiction sometimes justifies creation of federal common law,
 10 a grant of exclusive federal jurisdiction necessarily implies the application of federal law." (internal
 11 citations omitted)); *Cooley Law Sch.*, 459 F.3d at 712 ("[Section 1099b(f)'s grant of exclusive
 12 federal jurisdiction necessarily implies that federal law should govern disputes relating to decisions
 13 made by those bodies. It would make little sense for state law to govern claims that could not be
 14 heard in any state court.>"). In contrast, here, as discussed above there is no grant of exclusive
 15 federal jurisdiction under section 1099b(f). Therefore, unlike the cases in which courts implied
 16 common law due process causes of action to effectuate Congress' grant of exclusive federal
 17 jurisdiction, here there is no basis or necessity to imply a cause of action. *Erie R. Co. v. Tompkins*,
 18 304 U.S. 64, 78 (1938) (noting the general rule that "[t]here is no federal general common law").
 19 Because the HEA does not, in the absence of a grant of exclusive jurisdiction, imply a common law
 20 due process cause of action, the Court GRANTS WASC's Motion for Summary Judgment.

21 **B. IME's Remaining Claims**

22 IME's common law due process claim, grounded in the HEA, is IME's only claim that even
 23 possibly presents a federal question. Having granted summary judgment on that claim and having
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25 ⁷ The two other cases IME cites are similarly inapposite. In *Florida College of Business v. Assoc.*
 26 *of Indep. Colleges & Schools*, 954 F. Supp. 256 (S.D. Fla. 1996), it is not clear that the court
 27 applied federal law. Further, the case concerned termination of accreditation, and therefore, the
 28 federal common law, if it were the source of law, would have been applicable under section
 1099b(f). *Id.* at 258. *Rockland Inst. v. Assoc. of Indep. Colleges & Schools*, 412 F. Supp. 1015
 (C.D. Cal. 1976), similarly does not clearly apply federal common law. Furthermore, as in *Florida*
College, the federal case concerned an express withdrawal of accreditation.

1 found that 20 U.S.C. § 1099b(f) does not provide IME with other grounds for jurisdiction, the
2 Court is presented with the question of whether to exercise supplemental jurisdiction over IME's
3 remaining state law claims under 28 U.S.C. 1367(c)(3). Where "all federal-law claims are
4 eliminated before trial, the balance of factors to be considered under the pendent jurisdiction
5 doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to
6 exercise jurisdiction over the remaining state-law claims." *Sanford v. MemberWorks, Inc.*, 625 F.3d
7 550, 561 (9th Cir. 2010) (quoting *Carnegie–Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n.7 (1988)).
8 Because that is the case here, the balance of factors points toward declining to exercise jurisdiction
9 over IME's remaining claims, which are all based on state law, and the Court DISMISSES IME's
10 remaining claims without prejudice.

11 **V. CONCLUSION**

12 For the foregoing reasons, the Court GRANTS WASC's Motion for Summary Judgment as
13 to IME's common law due process claim. The Court declines to exercise supplemental jurisdiction
14 over IME's remaining claims, which are all based on state law, pursuant to 28 U.S.C. § 1367(c)(3)
15 and therefore DISMISSES these claims without prejudice. The Clerk shall close the file.

16 **IT IS SO ORDERED.**

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18 Dated: December 18, 2013

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LUCY H. KOH
United States District Judge